IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.345 OF 2006

Ashok Leyland Finance ...Petitioners

v/s

Nilesh Mokashi and anr. ...Respondents

Ms Shakuntala Joshi for Petitioners.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 16TH OCTOBER 2006.

P.C. :-

1. This is a petition file under section 9 of the Arbitration and Conciliation Act 1996. Perusal of the arbitration clause shows that power to appoint an Arbitrator is vested in the petitioners. In exercise of that power, the petitioners have already appointed an Arbitrator. The only order that the petitioners are seeking in this petition is an order of temporary injunction restraining the respondents from dealing with and / or disposing of the property which is the subject matter of adjudication. Section 17 of the said Act confers power on the Arbitral Tribunal to make an interim order for protection of the subject matter of dispute. The order of temporary injunction against the respondents which is sought in the present petition is perfectly within the jurisdiction of the Arbitral Tribunal. The question is when two forums are available, whether the Court which has jurisdiction under section 9 of the said Act to make interim order should interfere or leave the party to the forum of their choice viz. the Arbitrator. In my opinion, the Court will be well advised to leave the party to approach the forum of their choice. The learned counsel appearing for petitioners relies on judgments of the Supreme Court to claim that the Court should make an

interim order under section 9 of the said Act though she can very well claim the same interim order before the Arbitral Tribunal. The first judgment relied on is in the case of M.D. Army Welfare Housing Organisation v/s Sumangal Services Pvt.Ltd., reported in 2003(3) Recent Arbitration Judgments 447 (SC). Perusal of that judgment shows that that judgment does not decide the question whether in the facts of that case, the Court is bound to interfere under section 9 of the said Act and make an interim order when the party can very well apply to the learned Arbitrator for the same interim relief. For deciding the question which arises in this case, this judgment is not relevant. The learned counsel also relies on two other judgments, one in the case of M.I. Builders Pvt.Ltd. v/s Radhey Shyam Sahu and others, reported in AIR 1999 SC 2468 and the other in the case of Nasiruddin and others v/s Sita Ram Agarwal, reported in (2003) 2 SCC 577. Both the judgments of the Supreme Court, according to the learned counsel, are relevant because the Supreme Court in both the judgments has laid down the principle as to how provisions of law are to be interpreted. The learned counsel submits that because under section 9 of the said Act the Court can grant interim order when arbitration is pending, the Court cannot decline to grant the same because remedy of making an application before the Arbitral Tribunal is available under section 17 of the said Act. When the

Court declines to make an interim order under section 9 of the said Act because the remedy of approaching Arbitral Tribunal under section 17 is available to the party, it does not do so because it lacks the power to do so but because it exercises its discretion and declines to interfere because the other remedy is available. The judgments of the Supreme Court relied on by the learned counsel appearing for petitioners are thus not relevant. Petition is disposed off. The petitioners shall be at liberty to approach Arbitral Tribunal for seeking appropriate interim order.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.